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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/910,316	07/19/2001	Daniel Putterman	MACV.P0001	2016

23349 7590 02/02/2009

Stattler-Suh PC  
60 SOUTH MARKET  
SUITE 480  
SAN JOSE, CA 95113

EXAMINER
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ART UNIT	PAPER NUMBER
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DATE MAILED: 02/02/2009

Please find below and/or attached an Office communication concerning this application or proceeding.

### **Notice of Improper Request for Continued Examination**

In the RCE filed 11/24/2008, the Applicant has cancelled the previously prosecuted claims and has attempted to enter previously withdrawn claims (**120-121, 123-124, 126 and 129-130**) that were restricted by original presentation (**in the Final Rejection dated 8/22/2008**) and additional claims that correspond to the previously withdrawn claims. Claims 120-121, 123-124, 126 and 129-130 have been previously recognized by the Examiner to be a separate and distinct invention from the previously prosecuted claims. The Examiner further notes that Applicant has made no statement addressing the previous restriction by original presentation made in the Final Rejection dated 8/22/2008.

The MPEP specifically states in section 201.06(d) I, "Applicants who wish to continue examination of the **same claimed invention** after the prosecution of a utility or plant application is closed should consider filing a request for continued examination (RCE) under 37 CFR 1.114".

Also note at MPEP section 201.06(d) IA, which states, "Applicants cannot, as a matter of right, obtain continued examination on claims that are independent and distinct from the invention previously claimed (i.e. applicants cannot switch inventions when filing an RCE)" and "However, any amendment canceling all claims drawn to the elected invention and presenting only claims drawn to the nonelected invention will be treated as nonresponsive. See MPEP § 821.03. Any newly submitted claims that are directed to an invention distinct from and independent of the invention previously claimed will be withdrawn from consideration".

Therefore, the request for continued examination is improper. Applicant may file a divisional application or reintroduce the original claims not restricted in the Final Rejection dated 8/22/2008, however, if the six-month date from the Final Office action dated 8/22/2008 expires, a petition to revive the instant application must be submitted.

The amendment filed on 11/24/2008 canceling all claims drawn to the elected invention and presenting only claims drawn to a non-elected invention is non-responsive (MPEP § 821.03). The remaining claims are not readable on the elected invention (**see election by original presentation presented in the Final Rejection dated 8/22/2008**).

Since the above-mentioned amendment appears to be a *bona fide* attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason P. Salce whose telephone number is (571) 272-7301. The examiner can normally be reached on M-F 9am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Miller can be reached on (571) 272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2421

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jason P Salce/  
Primary Examiner, Art Unit 2421

Jason P Salce  
Primary Examiner  
Art Unit 2421

January 26, 2009